United Nations E/2017/SR.7

Economic and Social Council

Distr.: General
13 February 2017

Original: English

2017 session
28 July 2016-27 July 2017

Summary record of the 7th meeting
Held at Headquarters, New York, on Friday, 9 December 2016, at 10 a.m.

President: Mr. Shava ..... (Zimbabwe)

Contents

Agenda item 18: Economic and environmental questions (*continued*)

(b) International cooperation in tax matters (*continued*)

Special meeting on international cooperation in tax matters

This record is subject to corrections.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent as soon as possible to the Chief of the Documents Management Section (dms@un.org).

Corrected records will be reissued electronically on the Official Document System of the United Nations (http://documents.un.org/).

16-21846 (E)

Please recycle

The meeting was called to order at 10.15 a.m.

Agenda item 18: Economic and environmental questions: (*continued*)

(h) International cooperation in tax matters (*continued*)

Draft decision E/2017/L.10: Dates of the fourteenth session of the Committee of Experts on International Cooperation in Tax Matters and special meeting of the Council on international cooperation in tax matters in 2017

1. **The President** said that the draft decision contained no programme budget implications. He took it that the Council wished to adopt the draft decision.

2. *It was so decided.*

Special meeting on international cooperation in tax matters

Opening remarks by the President of the Economic and Social Council

3. **The President** said that in accordance with the consensus reached by Member States during the Third International Conference on Financing for Development, the special meeting was being held back to back with the thirteenth session of the Committee of Experts on International Cooperation in Tax Matters. The morning session would commence with an update on the work of the Committee and would be followed by three interactive dialogues. They would serve to increase the mutual engagement of the Committee and the Council, thereby bridging the gap between the technical nature of the work of the Committee and the broader policy interests of Governments, in particular national tax authorities and relevant ministries.

4. The first dialogue would focus on tackling international tax evasion and avoidance, specifically in the areas of base erosion and profit shifting, transfer pricing and the exchange of information. It was essential for countries to protect and broaden their tax base and prevent the shifting of profits outside the country, through international tax evasion and avoidance schemes, in order to establish and maintain a sustainable source of revenues. To protect the tax base of developing countries, it was also crucial to promote clear rules on transfer pricing. Additionally, international transparency was pivotal to ensure that tax authorities could efficiently administer tax laws. To that end effective mechanisms for the exchange of tax information among countries had to be enacted to support domestic efforts.

5. The second dialogue would focus on the challenges related to broadening the tax base of developing countries, in particular taxation of services and extractive industries. Services, which played an increasingly important role in global trade, were often difficult to track and correctly value for taxation purposes. Entities in developing countries were often the recipients of services from international sources; however, many countries lacked clear rules for the taxation of cross-border services. Likewise, mining and petroleum-related activities were central to the economy of many developing countries. The key challenge was to ensure that those countries received a fair share of the wealth derived from the exploitation of their resources, while being able to attract investment in those sectors.

6. The third dialogue would focus on instruments for implementation developed and promoted by the Committee. The *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries* was an invaluable practical instrument to support developing countries in their negotiations.

7. Several years earlier, the Financing for Development Office had begun to implement a programme to strengthen the capacity of developing countries with a view to increasing their potential for domestic revenue mobilization.

8. In each of the three segments, panel presentations would be followed by an interactive dialogue between Council delegations, members of the Committee and other stakeholders. In the afternoon, discussions would focus on strengthening tax capacity in developing countries. In July 2016, a report had been submitted by the inter-agency Platform for Collaboration on Tax to the Group of 20 Finance Ministers, a joint initiative launched earlier that year by the International Monetary Fund, Organisation for Economic Co-operation and Development, the United Nations and the World Bank Group, to intensify their cooperation on tax issues. Central to that report was a series of recommendations on the key elements of effective tax capacity-building programmes.

9. There were substantial gaps in raising tax revenues between developed and developing countries that would inherently impact the ability of countries to achieve the Sustainable Development Goals. While strong development-oriented tax policies, modernized tax systems and efficient tax collection procedures were essential at the national level, they must be strengthened through international tax cooperation.

Interactive dialogue on Protecting the Tax Base of Developing Countries and Tackling International Tax Evasion and Avoidance

10. **Mr. Ault** (Professor Emeritus, Boston College Law School), moderator, said that the dialogue was aimed at enhancing Council awareness of Committee activities and highlighting the connection between technical tax rules and the broader policy goals of revenue sustainability and capacity development. The three themes for discussion were the protection of tax base, the broadening of the tax base, and the instruments developed by the Committee to enhance the revenue-raising capacity of developing countries.

11. **Mr. Lara Yaffar** (Mexico, Chair, Committee of Experts on International Cooperation in Tax Matters and Coordinator of the Subcommittee on Exchange of Information) said that with the support of the Council, the Committee was finally able to convene meetings biannually, making its work more dynamic, and allowing for more discussion and improved results. The current working methods would ensure that the Committee could properly address the needs of developing countries.

12. The ultimate objective of the Committee, which was open to international organizations, was to obtain the best possible input in order to develop tax policy that would benefit relationships between developed and developing countries. The Committee, understanding that it represented an important resource, listened to and worked with the business sector.

13. The Committee had updated the model United Nations convention between developed and developing countries, and that work was reflected in its attempt to establish clear rules on how cross-border transactions should be taxed. The fundamental challenge was to update the convention so that it reflected and met current needs. Last updated in 2011, the next update would be presented in 2017.

14. In order to take into account the concerns regarding factors generating base erosion, in the update of the model convention the Committee had modified a number of articles, in particular those regarding permanent establishments and the concept of which parties had the right to treaty benefits. It had also amended the treaty to provide for the establishment of mechanisms that avoided abusive or incorrect application of treaties.

15. The second important element of the work of the Committee was the establishment of standards for cooperation between tax authorities with regard to information exchange. The United Nations model assembled the best experiences garnered from other models. The Committee aimed to avoid barriers that allowed anyone to avoid or evade taxation, and exchange of information was crucial in that respect.

16. Another important element was transfer pricing. With heavy multinational enterprise investment in developing countries, such investments should be properly taxed. Transfer pricing mechanisms were often not sufficiently covered by legislation; problems that arose thus could not be properly tackled, which could cause problems with tax administration and lead to significant erosion of the tax base. A transfer pricing study had been conducted, gathering experience that, while outside the model standard, was nevertheless useful and implementable, depending on the needs of specific countries.

17. In a controversial move, the Committee had taken a decision to tax technical services in an attempt to develop tax policies that bolstered and improved tax collection in developing countries. Eventually, implementation of that new step would have to be reviewed, and further measures might prove necessary in future. Currently, though, the initiative represented an important step forward that reflected the desire of the Committee to establish balance between the needs of developed and developing countries, and to properly meet the needs of the latter while better representing their interests.

18. With regard to extractive industries, efforts should be made to find the optimum balance to retain foreign investments while ensuring that the country reaped the benefits of investment. Work had been undertaken with the business sector in order to strike such a balance and recommendations had been issued to render achievement of that goal possible. Two or three criteria could be elaborated by developing countries to develop tax policy and ensure that extractive industries could be more beneficially taxed. Developing countries in particular needed robust capacity-building programmes. The Committee had partnered with donor industries and set a dynamic agenda, allowing various countries to achieve that capacity-building goal. Seminars on the issue, a number of which had been held in various parts of world, were crucial to ensuring that participants could access the necessary technical assistance, thereby allowing them to become involved in international taxation.

19. **Ms. Peters** (New Zealand, Coordinator, Subcommittee on Base Erosion and Profit Shifting Issues for Developing Countries; Policy Manager,

Inland Revenue) said that the ability to tax the profits of foreign investment provided an important part of the tax bases of many developed and developing countries. The terms "base erosion" and "profit shifting" referred to strategies used by multinational enterprises to minimize their exposure to taxation in the countries where they operated. Use of such strategies had come to be recognized as a global problem that affected developed and developing countries alike. International cooperation was required to solve the problem; individual governments could not resolve it unilaterally.

20. One prevalent form of tax avoidance involved investors based in third countries taking advantage of bilateral treaties to which their countries were not party. She gave the example of an investor based in "country T" who held stocks in a company which operated in "country S", with a view to making profits in the form of dividends. In the absence of a bilateral treaty between the two countries, country S would apply a withholding tax of 25 per cent to any dividends paid to investors abroad. In order to avoid the loss of 25 per cent of the profits the investor would arrange, in exchange for a payment, for the dividends to be paid to an entity based in a third country that did have a bilateral agreement with country S stipulating that there was no withholding tax.

21. Through the Addis Ababa Action Agenda, Member States had committed to improving the fairness, transparency, efficiency and effectiveness of tax systems, including by broadening the tax base. They had also agreed to reduce opportunities for tax avoidance, including by inserting anti-abuse clauses in bilateral tax treaties, and to ensure that multinational groups paid taxes to the governments of countries where their economic activity occurred.

22. In the first phase of its recent work, the Subcommittee on Base Erosion and Profit Shifting had opened a dialogue with developing countries regarding their experiences of base erosion and profit shifting. The Subcommittee had created a survey, to which the governments of 20 developing countries had responded. The responses indicated that the most widespread major problems related to two areas: domestic law and bilateral tax treaties.

23. The second phase of the Subcommittee's work had been to develop amendments to the United Nations Model Double Taxation Convention between Developed and Developing Countries with a view to addressing the abuse of bilateral tax treaties. Specifically, it had proposed a new preamble, which would establish that treaties were not to be misused, the addition of new articles to address treaty abuse, changes to existing articles to address specific treaty abuse structures and the expansion of taxing rights for governments of countries in which multinationals operated and generated income.

24. **Mr. Sollund** (Coordinator, Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing; Director-General, Head of International Tax Section, Tax Law Department, Ministry of Finance, Norway) said that although "transfer pricing" tended to have negative connotations, it was inherently a neutral term: it referred to the setting of prices, including terms and conditions, for cross-border transactions between entities that were part of the same multinational group. Trading within multinational groups accounted for a substantial part of all global trade and the parties involved necessarily had to agree on prices. However, intra-group transactions impacted the tax bases of each entity involved and were not necessarily subject to the normal market forces; moreover, there were sometimes additional considerations underlying the decisions reached on prices and contracts within multinational groups. "Transfer mispricing" was used to shift profit from where value was created to countries that had no taxes or very low taxes and was a form of tax avoidance. Therefore, whilst transfer pricing was not inherently a form of tax avoidance, its monitoring for taxation purposes was essential.

25. Transfer pricing played an important role in relation to development. When multinationals operating in developing countries used mispricing to report lower profits than they actually made, they paid less in taxes, thereby reducing the revenue available for financing development. However, in seeking to address mispricing, governments potentially jeopardized foreign direct investment. If one government adjusted the pricing of an intra-group transaction so as to increase the profits made and taxable in that country, the government of the other tax jurisdiction involved needed to make a corresponding reduction in its calculation of taxable profits. If tax authorities failed to coordinate, part of a multinational's profits could be taxed twice. Double taxation discouraged foreign direct investment, which was also damaging for development. Consequently it was in the interest of any government that wanted to encourage foreign investment to seek to prevent double taxation.

26. The "arm's length principle", embodied in article 9 of both the United Nations Model Double Taxation Convention between Developed and Developing Countries and the Organisation for Economic Co-operation and Development (OECD) Model Tax

Convention on Income and on Capital, was the guiding principle for determining transfer prices. According to it, intra-group transactions had to be compared to transactions between unrelated parties under equivalent circumstances; in other words, for tax purposes market conditions were used as a benchmark. Although it appeared to provide a sound basis for policy and was easy to understand in theory, application of the arm's length principle was not straightforward due to the complexity of many transactions and the difficulty in identifying appropriate control transactions between unrelated parties. Particularly in developing countries, it was sometimes hard to find a sufficient number of comparable transactions, and the relevant data on those transactions was less accessible. Moreover, in addition to obtaining the requisite data, developing countries' tax administrations must have the skills and capacity to conduct transfer pricing analyses. Transfer pricing was therefore a major area for capacity-building.

27. In 2012 the United Nations Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing had adopted the *United Nations Practical Manual on Transfer Pricing for Developing Countries* in response to the need expressed by developing countries for clearer guidance on the policy and administrative aspects of applying transfer pricing analysis to cross-border transactions. The *Manual* was a living document. In 2013 the Subcommittee had been re-established and given a twofold mandate: to revise the Commentary on article 9 of the United Nations Model Convention, and to update and enhance the *Manual*. Specifically, the Subcommittee had been working to ensure that the *Manual* reflected the operation and provisions of article 9 of the United Nations Model Convention and relevant commentaries, and that it had a strong focus on the realities and experiences of developing countries, as well as drawing on work being done in other forums.

28. The Subcommittee had also rearranged the *Manual* for the sake of clarity. Part A was an overview chapter which put transfer pricing in context. Part B contained guidance on policy design, Part C dealt with the administrative aspects of implementing transfer pricing regimes and Part D contained specific countries' practices (with sections on China, India, South Africa, Brazil and Mexico). The Subcommittee was also adding new chapters on intra-group services, cost contribution arrangements and intangibles, as well as updating other chapters to incorporate new information — importantly, the results of work done by the Group of 20 and the OECD in their Action Plan on Base Erosion and Profit Shifting, launched in 2013. In the chapter on intra-group services, a coordinated approach was taken to preventing double taxation, with services examined from three perspectives: those of the tax administration authorities, who sought to ensure that a sufficient amount was paid for services received, in accordance with the arm's length principle; the recipient, who wanted to ensure that they did not pay excessive fees and that the services they received were of benefit; and the industry, which wanted to make sure that the costs incurred by multinational enterprises were justified. The chapter on intangibles and intellectual property examined how value was created within multinationals; it contained guidance on how to attribute value to the functions within a multinational that created it and to ensure that revenue did not revert only to those with legal ownership.

29. **Mr. Lara Yaffar** (Coordinator, Subcommittee on Exchange of Information; Chair of the Committee of Experts on International Cooperation in Tax Matters) said that improving tax policies was not enough to secure increased tax revenues. Tax administrations also needed adequate information on compliance with tax obligations, which meant that they must not only have the necessary systems in place, but also benefit from international cooperation.

30. In the Addis Ababa Action Agenda governments had committed to transparency and effective information exchange with a view to combatting tax avoidance and evasion, and had recognized the need for automatic information exchange. The Common Reporting Standard and the United States of America's Foreign Account Tax Compliance Act were the existing mechanisms for automatic information exchange. They provided for the sharing of financial information by financial entities with both the tax authorities of the country where they were based and with the tax authorities of the country where the account holder, trustee or other beneficiary resided, making it possible to ascertain whether beneficiaries with investments abroad were paying sufficient tax in their countries of residence. Since automatic exchange of information on multinationals' transactions was also fundamental, the G20 and the OECD had established, in their Action Plan on Base Erosion and Profit Shifting, a set of data that multinationals should provide in order to enable the tax authorities of the countries where their subsidiaries were located to determine whether their intra-group transactions were being conducted at market rates. It was important to know who the effective beneficiaries of multinationals' profits were.

31. Article 26 of the United Nations Model Convention provided the legal basis for the exchange of information. The mandate of the Subcommittee on Exchange of Information consisted of amending

article 26 and its Commentary, and of monitoring international developments in the area of exchange of information, including meetings of the Global Forum on Transparency and Exchange of Information for Tax Purposes, an international group that determined the standards countries must abide by in order to comply with their information exchange responsibilities.

32. The Subcommittee had been expanding the Commentary on article 26 of the United Nations Model Convention. First, with regard to what information must be shared, it had been working to clarify the meaning of "foreseeably relevant". Second, the scope of international cooperation in information exchange was being expanded to cover requests for information on groups of taxpayers. If, for instance, a tax authority recognized that a group of individuals had invested in a single product, that could form the basis for an international exchange of information even if the individuals' identities were unknown, whereas in the past it had been necessary to know the names or addresses of the account holders concerned. Third, because complying with requests for information generated administrative work, tax authorities should not send such requests without sufficient evidence of tax avoidance or evasion. The Subcommittee had therefore added guidance concerning unsubstantiated requests, or "fishing expeditions". Lastly, if tax information was provided years after it was requested, it was of little use, so the Subcommittee had expanded the Commentary to clarify that information must be made available in a timely fashion.

33. The Subcommittee had also been developing a Code of Conduct on Cooperation in Combating International Tax Evasion. The Code was designed to promote adherence to the highest standards in the area of information exchange, including automatic information exchange, the most effective means of verifying compliance with tax obligations. The automatic exchange of information presented significant challenges for developing countries: tax administrations must be able not only to receive information, but to manage it, maintain it encrypted, transmit it securely and use it effectively. That required internal regulations as well as technological capacity; therefore the Code also made clear the imperative to train developing countries' tax authorities on the automatic exchange of information.

34. In the Code, the Subcommittee endorsed the Common Reporting Standard and encouraged all countries that had not already done so to become parties to the multilateral Convention on Mutual Administrative Assistance in Tax Matters. It also recognized the need for multi-stakeholder cooperation in order to help developing countries identify and address their needs for capacity building and technical assistance in the area of automatic exchange of information.

Interactive dialogue

35. **Mr. Castillero** (Advisor to the Office of the Vice-President for issues related to the platform of international services of the Republic of Panama) said that Latin American countries' achievement of their sustainable development goals would be contingent on a coordinated approach to international tax cooperation, which would involve fighting tax evasion and corruption as well as ensuring that State money was used efficiently. His Government was committed to the exchange of information and had acted to bring Panamanian legislation into line with the new methodology called for by the international community. For instance, it had recently become a party to the Convention on Mutual Administrative Assistance in Tax Matters and adopted national legislation to facilitate the automatic exchange of information in accordance with the Common Reporting Standard and the Foreign Account Tax Compliance Act, in addition to negotiating automatic information exchange agreements with some countries.

36. However, the exchange of information entailed various challenges for middle income countries like Panama. First, they needed to build human capacity: in the upcoming months, they would need to identify and train personnel, who must be specialized and trustworthy, to manage information exchange, including automatic information exchange. Second, all countries must ensure that information exchanged would not be misused in violation of its owners' most fundamental rights. Panama was geographically situated amidst countries lacking full legal stability, and where political risks, economic instability and even threats to citizens' personal safety persisted. Finding the right balance between individuals' legitimate right to privacy and the transparent exchange of tax information was a very sensitive matter in Latin America and in other large areas of the world. Lastly, adequate transition periods were necessary to ensure that middle income countries could adapt to the new world realities without generating internal crises, and they must not be required to take measures that they could not afford. The key to sustainable development lay in finding good responses to those challenges.

37. **Ms. Rubagumya** (Uganda) said that tackling tax evasion was vital to her Government. The revenue administration had put in place measures to that end,

including by putting emphasis on economic activity. Equipped with a robust domestic legal regime, Uganda imposed taxes on all entities involved in economic activity inside the country regardless of where the entity was based. In response to the challenge posed by treaty shopping, her country was examining how to amend legislation to tighten provisions on limitation of benefits and promote beneficial ownership. It was also taking steps to renegotiate double taxation agreements to prevent entities not entitled to take advantage of Ugandan tax provisions from doing so.

38. Her Government had introduced regulations on transfer pricing in 2011 and established an international taxation unit that provided training to build national capacities in that area. The issue of comparables remained a major challenge. She therefore called on the United Nations to assist countries with obtaining information on comparables.

39. As a member of the Global Forum, Uganda was able to share information with a wide range of countries. Moreover, the African Tax Administration Forum facilitated the automatic exchange of information. In order to protect domestic tax bases, efforts should be made to ensure that domestic legal regimes and international tax treaties did not conflict.

40. **Mr. Bolado** (Observer for Mexico) said that royalties, which were particularly vulnerable to base erosion, were a subject of particular importance in the mandate of the Committee of Experts on International Cooperation in Tax Matters. The Committee had proposed an alternative that would lead to more equitable revenue distribution. Under that scheme, payments for the rental of industrial, commercial or scientific equipment in the context of contracts for satellite providers would be considered royalties instead of payment for services. Even if they were also considered payment for services, a permanent establishment would be required in order to allow the source country to collect those taxes.

41. In one scenario, possession of the equipment would constitute a criterion for rental of industrial, commercial or scientific equipment. Under the other alternative, which the Subcommittee was developing, possession of the equipment would not be a strict requirement for undertaking business activity or exploitation, or for the operation to be considered a rental of industrial, commercial or scientific equipment, as what was being rented was the equipment's capacity to retransmit signals, voices or data. In closing, he wondered why the rules on possession of tangible objects were applied to intangible objects, such as the radiofrequency spectrum, which were impossible to possess. In the final analysis, exploitation of the capacity amounted to exploitation of the good itself.

42. **Mr. Obell** (Observer for Kenya) said that the question of protecting the tax base and tackling tax evasion and avoidance was a vital one, particularly with regard to domestic mobilization of revenue from activity that took place in the country concerned. Once aware that such revenue was coming in, Governments were enabled to spend it in a more prudent way and thus be accountable to the taxpayers.

43. Multinational companies in Kenya did a large amount of business, heading such key sectors as extractives, information and telecommunications technology, large-scale agriculture, commercial banking, construction and engineering. In 2006 his Government had become aware of mispricing of goods and services in sales, a phenomenon that was undermining the tax base in Kenya. In addition, companies were manipulating permanent establishment by doing business in Kenya but reporting profits elsewhere, directly affecting the tax base. Lastly, companies had begun to take part in treaty shopping, which involved moving to countries with which Kenya had concluded double taxation agreements in order to enjoy the low tax rights that applied under such agreements.

44. In response, his Government had introduced transfer pricing legislation in 2006 and put in place a dedicated team of professionals trained in transfer pricing issues. Furthermore, Kenya had been working closely with the Global Forum on Transparency and Exchange of Information for Tax Purposes and had become party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. A team had been created and received continuous training in information exchange in order to assist with tax base protection efforts.

45. The measures adopted by his Government had been fairly successful. Revenue had increased as a result of tax collection from multinational companies, and voluntary compliance was increasing in those areas, with significant transfer pricing adjustments being made. While challenges persisted — including in the critical areas of local comparative data and information exchange, which was not yet automatic — Kenya was collaborating with international organizations in order to build its capacity. It had also recently signed a collaborative agreement with Botswana to provide tax audit support and would continue to pursue South-South collaboration in that area.

46. **Mr. Campuzano** (Observer for Ecuador) said that Ecuador had established its transfer pricing regime in 2007 and promptly realized the extent of the knowledge gap between local auditors and multinationals, which had been dealing with the topic for many years by that point. It took a great effort for the tax administration to become versed in those topics. By 2009, the progress made had been considerable, and between 2011 and 2013, Ecuador had been a guest member of the Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing at the United Nations. That experience had greatly benefited Ecuador, which had used the information gleaned in its audits.

47. As a developing country, Ecuador had several relevant commodities cases and had applied the methodology it had learned in the case of bananas to other commodities. It had continued to advance in other sectors and had been invited by the United Nations to participate in designing the first training courses on transfer pricing between 2014 and 2015. Ecuador had also been among the first countries to participate in the United Nations Capacity Development Programme on International Tax Cooperation, some 300 auditors receiving direct or indirect training. As a result, approximately 110 audits had been conducted at the national level, resulting in $800 million in transfer pricing adjustments.

48. **Mr. Sollund** (Coordinator, Subcommittee on Article 9 (Associated Enterprises): Transfer Pricing; Director-General, Head of International Tax Section, Tax Law Department, Ministry of Finance, Norway) said that many important points had been raised during the discussion on transfer pricing, including the importance of having domestic law, the organization of specialized units in tax administration to which capacity building could be targeted and the problem of local market data on comparables. In the next update of the *Practical Manual on Transfer Pricing*, a subsection would cover the so-called sixth method on commodity pricing, reflecting the current practice and legislation in a number of Latin American countries.

49. **Mr. Lara Yaffar** (Coordinator, Subcommittee on Exchange of Information; Chair of the Committee of Experts on International Cooperation in Tax Matters) said that he agreed that the greatest challenges were first, to create the human capacity for exchange and second, the technological capacity to have secure information. Ensuring secure information exchange was one of the greatest demands faced by the private sector. For its part, the United Nations could provide training and best practices in that area; efforts were under way to devise measures to protect information. In order to address that problem, Uganda had sought training in the area of automatic information exchange. Smaller financial entities sometimes had difficulty in transmitting information securely, leaving them unable to fulfil their obligation in that regard. The Committee must address that phenomenon in a comprehensive manner, seeking the ideal manner of guaranteeing the fulfilment of that obligation.

50. **Ms. Peters** (New Zealand, Coordinator, Subcommittee on Base Erosion and Profit Shifting Issues for Developing Countries; Policy Manager, Inland Revenue) said that treaties were bilateral instruments intended to provide benefits to the people and companies in the two concerned countries, not to people and companies in third countries. The United Nations model must therefore be improved in order to ensure that people from third countries not party to those treaties did not take advantage of treaty arrangements.

Panel discussion on Broadening of the Tax Base of Developing Countries

51. **Ms. Kana** (Coordinator of the Subcommittee on Tax Treatment of Services; and Head of the Department of International Taxation, Internal Revenue Service, Chile) said that a closer look should be taken at how to tax services, which had exceeded global trade and manufacturing in value. Countries taxed cross-border services in different ways, and no international agreement existed on what constituted a service for tax purposes. The taxation of services was an issue of base erosion and profit shifting, as developing countries were at risk of falling prey to base erosion.

52. The Committee had established the Subcommittee on Tax Treatment of Services in 2009 with a mandate to broadly address the issue of taxation of services. Base erosion occurred when companies contracted services across a border and paid less in taxes as a result. In the absence of a tax treaty, some countries would normally tax non-residents, or withhold taxes, for a given cross-border service in order to avoid losing revenue. Tax treaties generally addressed taxation in the source country with the resident's country. The Subcommittee on Tax Treatment of Services had created a new article that would allow the source country that was paying for the service to tax cross-border service payments. The new article also allowed countries to negotiate the 30 per cent withholding tax that was applicable without the tax treaty.

53. Avoiding double taxation and determining which country would receive revenue were two of the

difficulties involved in negotiating tax treaties involving cross-border services. Because of the splitting of tax revenue, it was sometimes not appropriate to have a tax treaty. In closing, she highlighted the importance of including the efforts made on base erosion and profit shifting in the future work of the Subcommittee.

54. **Mr. Mensah** (Coordinator, Subcommittee on Extractive Industries Taxation Issues for Developing Countries, Committee of Experts on International Cooperation in Tax Matters; and Assistant Commissioner, Ghana Revenue Authority) said that extractive industries constituted a substantial source of revenue for much of the developing world, in some cases reaching 80 per cent, hence the adverse economic impact of dropping prices. Even where resources were abundant and prices were good, a given Government's share of extractives revenue relied heavily on the country's taxation regime. Most importantly, given that the resources exploited in the extractive industry were finite, non-renewable and affected the environment, developing countries must benefit optimally from those resources. However, that benefit should be weighed against the need to attract investment in the first place; neither countries nor businesses would gain anything from unexploited resources in the absence of interested investors.

55. The Addis Ababa Action Agenda had recognized that countries that relied on natural resources needed to encourage investments, adding value to those resources. They must also address excessive extractive industry tax incentives, which had been shown to reduce the benefit reaped by those countries and fetter the industry. As a result, some resource-rich African countries remained underdeveloped and very poor. The agenda had also recognized the need for best practices.

56. On that basis, the Committee of Experts on International Cooperation in Tax Matters had established the Subcommittee to provide developing countries with the necessary guidance after concluding that most of them did not have the capacity to gain enough from their resources. The Subcommittee membership brought together a wide range of actors, including members of the Committee, civil society organizations, academics, and representatives of private industry and international taxation bodies.

57. The Subcommittee had set out to provide an overview note and specialized papers on extractive industries taxation issues, specifically on taxation of capital gains and indirect asset transfers. Guidance notes addressing various topics were then prepared on the basis of the overview note. Certain aspects of decommissioning contracts negotiated by developing countries for the exploitation of their resources had been overlooked, namely, the serious environmental repercussions and the lack of capacity to remedy them. It had also emerged that there was a need for countries to renegotiate some agreements that were overly advantageous with respect to the resources being exploited.

58. At its twelfth session in October 2016, the Subcommittee had presented completed overview notes and guidance notes on selected treaty issues for approval by the Committee. At its thirteenth session, other guidance notes on value-added tax and permanent establishment had later been developed and approved by the Committee. The Subcommittee would be publishing a handbook on selected issues in extractive industries for developing countries, for launch in June 2017. It would continue to produce guidance notes on other related issues of concern to developing countries.

59. **Mr. Romano** (Observer for Uruguay) said that the issue of the treatment of services to avoid double taxation was highly relevant for his country. As a developing country, Uruguay depended almost exclusively on tax collection to finance its public policies and budgets; it therefore closely monitored aggressive fiscal practices that might erode its tax base.

60. In practice, his country had seen that services, and especially technical services, were used in tax planning work as an instrument to erode the tax base. In some cases, payment for services covered the remittances of dividends, which caused two-fold base erosion. Examining issues such as over-invoicing and payment for services in the weak tax administration of developing countries such as Uruguay was a difficult and complicated task.

61. His delegation commended the inclusion of a specific article regarding technical services in the United Nations Model Double Taxation Convention between Developed and Developing Countries as a highly useful tool to combat base erosion. His country had already included the article in its own model convention in 2016.

62. Unfortunately, the Model Tax Convention on Income and on Capital of the Organization for Economic Cooperation and Development lacked a special clause for the treatment of services. According to that model, services could only be taxed if they were provided through a permanent establishment. However, the required threshold for the verification of a

permanent establishment was very high and thus created ample leeway for tax base erosion.

63. **Mr. Gomes Sambo** (Observer for Angola) said that his delegation commended the inclusion of an article in the United Nations Model Convention on the withholding tax on payment fees for technical services. Angola had traditionally been a service importer, from everyday management services to high technology complex services associated with the extractive oil, gas and mining industries. Virtually all services in Angola had a strong base of foreign providers. Despite huge growth in his country's internal capacity to provide such services, there remained important demand for foreign providers, especially in industries with greater complexity and value. Important sums of money were still being paid to such providers for services performed in the country or to Angolan entities, thus constituting a significant part of the tax base. Many such foreign service providers did not have a real presence in the country; even when they did, it was often difficult to control income flows.

64. The inclusion of the article on the withholding tax in the United Nations Model Convention would provide his country and similar developing countries with an important negotiation tool to protect their tax base. With technical cooperation support provided by the Financing for Development Office, his country would work on inserting a similar article into its national template.

65. **Mr. Morales** (Dominican Republic) said that his country had identified the impact of excessive tax incentives as one of the main causes of tax base erosion. Tax expenditures in his country represented more than 6 per cent of the gross domestic product (GDP). However, tax incentives were applied to various economic sectors that eroded the tax base, with the result that the latter had not exceeded more than 13 per cent of GDP in recent years. Excessive tax incentives also made it difficult to increase taxes and created possibilities for tax evasion and avoidance.

66. With the help of the International Monetary Fund, the Inter-American Development Bank, the Inter-American Center of Tax Administrations (CIAT) and the United Nations, his country had conducted a comprehensive ex ante and ex post study of tax expenditures and contributions using a cost-benefit analysis to examine incentives and investments involving incentives, with a view to blocking excessive tax incentives before they were approved.

67. Since 2015, with support from the United Nations Financing for Development Office, his country had been developing an ex post method to evaluate tax incentives. Within the framework of that technical assistance, a workshop had been held where the specific national situation had been analysed and best practices to measure tax expenditures had been presented. The workshop had also prompted his country to undertake remote work via e-mail and telephone with United Nations experts to develop a replicable methodology that could be expanded to other developing countries in Latin America and the Caribbean.

68. **Mr. Mensah** (Coordinator, Subcommittee on Extractive Industries Taxation Issues for Developing Countries) expressed appreciation that the United Nations was working on a methodology to address excessive tax incentives, as his country also suffered from that burden.

Panel discussion on Instruments for capacity-building

69. **Mr. Lasars** (Coordinator, Subcommittee on Negotiation of Tax Treaties — Practical Manual and Director, International Tax Section, Federal Ministry of Finance, Germany) said that the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries had been successfully elaborated in conformity with the mandate of the United Nations Tax Committee enshrined in Economic and Social Council resolution 2004/69. The Manual highlighted the important role of double tax treaties in international cooperation on tax matters, which encouraged investment by reducing tax barriers; promoted the transfer of skills and technology; and reduced cross-border tax avoidance and evasion through the exchange of tax information and mutual assistance in tax collection. With the adoption of the Addis Ababa Action Agenda, Member States had pledged to reduce opportunities for tax avoidance, and to consider inserting anti-abuse clauses in all their tax treaties. In addition, they had committed to enhancing disclosure practices and transparency in both source and destination countries, including by seeking to ensure transparency in all financial transactions between Governments and companies. Multinational companies must pay taxes to the Governments of countries where their economic activity occurred and value was created, in accordance with national and international laws and practices. Consequently, the Manual was an important contribution to the achievement of the Addis Ababa Action Agenda and would help developing countries in particular with their development efforts.

70. The Subcommittee on Negotiation of Tax Treaties — Practical Manual had been established in 2013 to develop a practical manual on the negotiation of

bilateral tax treaties that would be a compact, practical training tool for beginners or tax officials with limited experience; reflect the current version of the United Nations Model Convention; and draw upon all relevant previous work. The Manual supported treaty negotiators in developing countries, especially those with limited experience, by providing practical guidance, tools to identify each country's policy framework and intended outcomes, and a discussion of the Model Convention. The Manual was structured into four sections: a general introduction, a section on treaty policy, domestic models and negotiations, a section on treaty provisions, and a section on the improper use of treaties.

71. The Manual was practical in nature and highlighted the importance of a policy framework to negotiate tax treaties. The guidelines contained therein aimed to support negotiators with preparing for tax treaty negotiations; the conduct of negotiations; and post-negotiation activities.

72. With regard to policy framework, the Manual stressed that countries should develop a model treaty before entering into negotiations so as to know what they wanted. The policy framework should set out the main policy outcomes that a country wished to achieve, striking the right balance between protecting revenue and encouraging inbound investment. To achieve those ends, the tax treaties of most developing countries generally followed the Model Convention.

73. In treaties between developed and developing countries, reaching a fair balance between source and residence taxation was often the most controversial element of negotiations. The Manual illustrated different approaches to the taxation of cross-border transactions with regard to both source and residence countries (where income was generated and received, respectively). In many cross-border transactions, developing countries were the source of income, while developed countries were often the residence country of the income recipient. The United Nations Model Convention therefore placed greater emphasis on source country taxation than the OECD Model Convention.

74. The final section of the Manual addressed the improper use of double tax treaties, including both specific and general anti-abuse rules, their interpretation, and a number of common provisions found in domestic law. In deciding which anti-abuse rules to include in tax treaties, negotiators should take into account the risk of abuse in their country's economic and tax context, and in the process of their interactions with other tax systems; the ability of their tax administration to effectively administer provisions; and the effectiveness of the proposed provisions.

75. The United Nations Model Convention and the United Nations Manual for the Negotiation of Tax Treaties complemented each other: the former proposed the legal framework for tax treaties, while the latter aimed to help treaty negotiators realize their treaties.

76. **Ms. Halka** (Chief, Multi-stakeholder Engagement and Outreach Branch, Financing for Development Office, United Nations Department of Economic and Social Affairs) said that one specific mandate of the Committee of Experts on International Cooperation in Tax Matters was to provide recommendations for capacity-building, which the United Nations Capacity Development Programme in International Tax Cooperation carried out by hosting capacity-building workshops on international tax cooperation launched in 2012.

77. Like the broader United Nations system, the Programme was guided by the 2030 Agenda and the Addis Ababa Action Agenda, which far superseded previous financing for development outcomes in emphasizing the role of capacity-building, as well as science, technology and innovation, for implementation. The Addis Ababa Action Agenda made an unprecedented number of specific references to capacity development in the area of taxation. Moreover, it recognized that the scaling up of capacity-building at all levels would be essential for sustainable development and poverty eradication.

78. The specific mandate for the Capacity Development Programme had been endorsed by the Economic and Social Council, most recently in resolution 2017/2. The Council had likewise recognized the progress made by the Financing for Development Office in developing, within its mandate, a capacity development programme in international tax cooperation aimed at strengthening the capacity of ministers of finance and national tax authorities in developing countries to create more efficient tax systems. The Council had requested that the Office continue its work in that area and further develop its activities, including by elaborating practical tools.

79. The capacity development activities of the Office drew heavily on the outputs of the Committee of Experts; the Office sought to disseminate and operationalize them as capacity development tools, delivering courses and events based on those outputs. The Office also provided input to the work of the Committee if requested; for example, it had supported work on the Manual for the Negotiation of Bilateral

Tax Treaties. The Committee had also set up an Advisory Group on Capacity Development, mandated to engage with the Programme to ensure that relevant activities reflected the work of the Committee, took into account the needs of developing countries, and did not duplicate but effectively complement the existing tools and resources at the disposal of developing countries.

80. The United Nations Capacity Development Programme addressed the basic needs of developing countries, and was targeted to the least experienced countries, least developed countries in particular. Implemented through multi-stakeholder collaboration, the Programme worked to be complementary to more advanced services already provided by other organizations.

81. To disseminate the Committee's outputs, the Programme had developed a full set of courses and introductory primers on the United Nations Model Tax Convention and Transfer Pricing Manual to be delivered at the national and regional levels. It had also developed practical tools such as the Handbook on Selected Issues in Administration of Double Tax Treaties for Developing Countries, the Handbook on Selected Issues in Protecting the Tax Base of Developing Countries, and a number of practical portfolios. The Programme had shifted to country-level work in 2016 in several pilot countries, and had also developed online tools for broader reach.

82. **Mr. Tonino** (Inter-regional Adviser on International Tax Cooperation, Financing for Development Office, United Nations Department of Economic and Social Affairs) said that in terms of courses and other training activities, the Programme provided introductory training and comprehensive courses on double tax treaties and transfer pricing that drew upon the relevant United Nations manuals and models. Such courses were normally delivered in regional settings, in cooperation with regional tax organizations, and sought to involve experts from national tax authorities. The courses focused on South-South cooperation and had so far been attended by more than 250 tax officials from 55 developing countries. The most recent regional events had been hosted in Madagascar, Senegal, Panama and Zambia.

83. New online courses were being elaborated in response to the needs expressed by developing countries, including primers on double tax treaties and transfer pricing. As the primers would ideally all be offered in English, French and Spanish, countries and donor agencies were invited to support translation efforts.

84. The first capacity development publication issued by the Programme had been the *Handbook on Selected Issues in the Administration of Double Tax Treaties for Developing Countries*, which was available in English, French and Spanish. The second publication, the *Handbook on Selected Issues in Protecting the Tax Base of Developing Countries*, was being updated to reflect the latest developments and would be launched in July 2017 at an event in Addis Ababa. Finally, to complement the Handbook, a forthcoming publication called *Practical Portfolios on Protecting the Tax Base of Developing Countries* would be presented and discussed at a regional event in Kenya in March 2017. He expressed gratitude to the Italian Government for funding the events in Addis Ababa and Kenya.

85. The Governments of Ecuador, Angola and the Dominican Republic had already reported on the technical cooperation activities of the Programme at the country level. In Ecuador, a technical cooperation project on transfer pricing had been implemented in cooperation with the country's Internal Revenue Service and CIAT. The project had included a basic course and an advanced workshop on transfer pricing, followed up by remote and in-country technical assistance on specific national issues. The final country mission had been held in December 2016 in Quito. CIAT would deliver follow-up technical cooperation activities in 2017.

86. In Angola, the Programme was engaged in a technical cooperation project on the administration of tax treaties; a workshop on tax treaties had been held in September 2016 and a follow-up in-country mission would be held in January 2017.

87. Finally, in the Dominican Republic, the Programme had launched a technical cooperation project on tax incentives, which include a workshop held in June 2016, follow-up technical assistance focusing on the development of a methodology for an ex post cost-benefit analysis of tax incentives, and an in-country mission to be held in early 2017 to pilot test the methodology.

88. **Mr. Abu Daud** (Bangladesh) said that capacity building was extremely important for developing countries. It was essential if they were to keep pace with the changing global tax situation, attract foreign direct investment, accommodate other countries' wishes to engage in trade with minimal barriers, harmonise tax definitions, define tax bases, and, importantly, combat tax evasion by multinational enterprises. Without increased capacity, developing countries would not be able to establish mechanisms to eliminate double taxation, properly exchange

information with contracting States, make relationships with contracting States more reciprocal, allocate taxing rights to States, or mitigate foreign investors' uncertainty with regard to how their overseas profits would be taxed and repatriated. Most importantly, developing countries could not combat base erosion and profit shifting, address cross-border tax issues, or analyse the cost benefit of new treaties prior to adopting them.

89. *The United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries* supported countries to develop their own customized treaty models, which were effective and straightforward to implement. For Bangladesh, it was helpful in many areas: developing fiscal relationships with contracting States, informing foreign direct investors of their tax rights in its territory, allocating taxing rights to relevant States, broadening its tax base, making the national tax system compatible with the digital economy, addressing base erosion and profit shifting issues, increasing withholding tax at the source in instances of transactions with low-tax jurisdictions, indicating country-specific risk areas, building effective information exchange systems and monitoring the domestic impact of work on base erosion and profit shifting. Most importantly, the Manual helped Bangladesh to build its own capacity.

90. His Government disseminated knowledge on international tax matters within Bangladesh by requiring civil servants who attended international tax training to submit a report to the national tax authorities. Reports were either posted on the website of the national tax authorities or used as the basis for seminars.

The meeting rose at 1.15 p.m.